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C O N F I D E N T I A L ROME 003849

SIPDIS

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TAGS: [PREL](#) [MARR](#) [IT](#) [KICC](#)

SUBJECT: ITALY'S SUPPORT FOR ARTICLE 98 AGREEMENT
CONSTRAINED BY PUBLIC OPINION

REF: ROME 3796

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CLASSIFIED BY: ACTING DCM THOMAS COUNTRYMAN FOR REASONS 1.5(B)(D)

1. (C) AT AN AUGUST 5 WORKING LUNCH WITH U/S JOHN BOLTON AND EMBASSY, MFA AND MOD OFFICIALS ON THE INTERNATIONAL CRIMINAL COURT (ICC) AND OTHER ISSUES (REPORTED SEPTTEL), MFA DIRECTOR GENERAL GIANCARLO ARAGONO REITERATED ITALY'S WILLINGNESS TO ASSIST THE US WITH EFFORTS TO SIGN AN ARTICLE 98 AGREEMENT BUT ADDED THAT ITALIAN PUBLIC AND PARLIAMENTARY SUPPORT FOR THE ICC WOULD LIMIT THE EXTENT OF GOI SUPPORT. HE NOTED THAT THE EU CONSULTATIVE PROCESS NOW UNDERWAY IS NOT GOING IN THE USG'S FAVOR, IN PART BECAUSE SEVERAL COUNTRIES NEED TO DEMONSTRATE TO THEIR PUBLICS AN UNYIELDING SUPPORT FOR THE COURT. ARAGONA ASSURED U/S BOLTON THAT THE GOI IS WORKING WITHIN EU DISCUSSIONS TO ENSURE AN OUTCOME FLEXIBLE ENOUGH TO ACCOMMODATE THE USG REQUEST FOR ARTICLE 98 AGREEMENTS. ONCE EU CONSULTATIONS HAVE FINISHED, PROBABLY BY THE END OF THE MONTH, ITALY WILL BE ABLE TO DECIDE HOW BEST TO ACT BILATERALLY, ARAGONA SAID.

2. (C) U/S BOLTON EXPLAINED THAT A RECIPROCAL AGREEMENT WOULD PRESERVE WHAT ITALY ALREADY HAS AS A STATE PARTY TO THE ROME TREATY - THE RIGHT TO PROSECUTE AN ITALIAN SUSPECT UNDER ITALIAN LAW OR TURN THE SUSPECT OVER TO THE ICC. IT WOULD RECOGNIZE THE US'S RIGHT NOT TO BE A PARTY TO THE TREATY, JUST AS THE USG RECOGNIZES ITALY'S AND OTHERS' RIGHT TO RATIFY IT. THE USG IS NOT CRITICIZING THE ICC BY SEEKING ARTICLE 98 AGREEMENTS, U/S BOLTON CLARIFIED; WE ARE EXPLAINING WHY THE USG BELIEVES SUCH AGREEMENTS, WHICH ARE PROVIDED FOR IN THE TREATY, ARE NEEDED.

3. (C) ARAGONA ASSURED U/S BOLTON THAT ITALY IS CAREFULLY
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CONSIDERING THE US REQUEST TO SIGN AN ARTICLE 98 AGREEMENT (REFTEL). HOWEVER, WHATEVER ACTION THE GOI TAKES MUST BE CONSISTENT WITH ITALY'S COMMITMENT TO THE ICC OR THERE WOULD BE A "POLITICAL STORM" WITHIN THE PARLIAMENT AND PUBLIC OPINION, HE EXPLAINED. WHILE ENTERING INTO A RECIPROCAL AGREEMENT MIGHT SEEM LIKE A PRACTICAL SOLUTION, ARAGONA SAID IT WOULD BE POLITICALLY DIFFICULT FOR ITALY. THE ITALIAN PUBLIC, AS IN EUROPE GENERALLY, IS VERY COMMITTED TO THE ICC, ARAGONA SAID, PARTICULARLY BECAUSE THE TREATY CREATING THE COURT WAS SIGNED IN ROME. HE NOTED DOUBTS WITHIN THE EU COMMUNITY ABOUT THE INCLUSION OF ARTICLE 98 IN THE TREATY, AS WELL AS THE USG'S CLAIMS THAT FURTHER PROTECTIONS ARE NEEDED. US EFFORTS TO SIGN ARTICLE 98 AGREEMENTS ARE SEEN IN EUROPE AS ANOTHER WAY TO DISTANCE THE US FROM THE ICC, RATHER THAN A MEANS OF HELPING THE US TO ACCEPT THE COURT, ARAGONA EXPLAINED. THE UN DEBATE ON RENEWING THE BOSNIA POLICE FORCE (UNMIBH) MANDATE ONLY STRENGTHENED EU COHESION AND SUPPORT FOR THE ICC, ARAGONA STATED.

4. (C) COMMENT. ARAGONA'S ANSWER WAS CLEARER, BUT LESS POSITIVE, THAN THE ONE WE RECEIVED FROM PRIME MINISTER BERLUSCONI'S ADVISOR ON AUGUST 1 (REFTEL). HIS MOST VALUABLE COMMENT WAS HIS STATEMENT (SHORT OF A FIRM COMMITMENT) THAT ITALY WOULD WORK TO ENSURE THAT ANY EU DECISION LEFT ROOM FOR ITALY AND OTHER STATES TO PROCEED WITH BILATERAL AGREEMENTS. WHILE REITERATING BERLUSCONI'S WILLINGNESS TO HELP, ARAGONA COULDN'T RESIST RECOUNTING THE CRITICISM OF THE USG POSITION THAT PREVAILS AMONG EU (AND ITALIAN) LEGAL ADVISORS. FROM OUR POINT OF VIEW, WHAT THE LEGAL TYPES FAIL TO APPRECIATE IS THAT AN EU CONSENSUS AGAINST ARTICLE 98 AGREEMENTS WILL SERVE NO PURPOSE EXCEPT TO MAKE THEM FEEL RIGHTEOUS. IT WOULD NOT
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MAKE ANY DENT IN THE USG POSITION, AND WOULD ONLY BECOME A MAJOR IRRITANT IN OUR RELATIONS WITH THE EU AND WITH EU MEMBERS. BUT IF THE DECISION IS LEFT TO THE MFA LEGAL ADVISERS (NOT UNLIKELY IF THE DECISION IS TO BE MADE IN AUGUST), THAT IS THE OUTCOME WE RISK. EVEN AS BERLUSCONI AND HIS TEAM BEGIN THEIR AUGUST VACATIONS, WE WILL CONTINUE TO PUSH THIS ARGUMENT AT THE POLITICAL LEVEL. IT WOULD BE HELPFUL IF WE COULD ASSURE THE GOI THAT THEY WILL NOT BE STANDING ALONE IN RESISTING A NEGATIVE EU CONSENSUS ON ARTICLE 98. EMBASSY ROME WOULD GREATLY APPRECIATE DEPARTMENT AND OTHER EU POSTS KEEPING US CLOSELY INFORMED ON WHICH OTHER EU GOVERNMENTS ARE LEANING IN OUR DIRECTION ON THIS ISSUE.

END COMMENT.

15. (U) THIS CABLE HAS BEEN CLEARED BY U/S BOLTON.
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